

104TH CONGRESS
1ST SESSION

S. 438

To reform criminal laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 16 (legislative day, JANUARY 30), 1995

Ms. SNOWE introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

A BILL

To reform criminal laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “The Crime Control
5 Act of 1995”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) the most important domestic function of the
9 Federal Government is the protection of the personal
10 security of individual Americans through the enact-
11 ment and enforcement of laws against criminal be-
12 havior; and

8 Section 924(c) of title 18, United States Code, is
9 amended by adding at the end the following new para-
10 graph:

20 “(i) in the case of a first conviction of such
21 a crime, in addition to the sentence imposed for
22 the crime of violence or drug trafficking
23 crime—

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1 “(II) discharges a firearm with intent
2 to injure another person, shall be impris-
3 oned not less than 20 years; and

4 “(III) knowingly possesses a firearm
5 that is a machinegun or destructive device,
6 or is equipped with a firearm silencer or
7 firearm muffler, shall be imprisoned not
8 less than 30 years; and

9 “(ii) in the case of a second conviction of
10 such a crime, in addition to the sentence im-
11 posed for the crime of violence or drug traffick-
12 ing crime—

13 “(I) knowingly possesses a firearm
14 during and in relation to the crime of vio-
15 lence or drug trafficking crime shall be im-
16 prisoned not less than 20 years;

17 “(II) discharges a firearm during and
18 in relation to the crime of violence or drug
19 trafficking crime shall be imprisoned not
20 less than 30 years; and

21 “(III) discharges a firearm that is a
22 machinegun or a destructive device, or is
23 equipped with a firearm silencer or firearm
24 muffler, shall be imprisoned for life.

1 “(iii) in the case of a third or subsequent
2 conviction of such a crime, possesses or dis-
3 charges a firearm in a manner described in
4 clause (i) or (ii), shall be imprisoned for life.

5 “(B)(i) Notwithstanding any other law, a court
6 shall not place on probation or suspend the sentence
7 of any person convicted of a violation of this sub-
8 section, nor shall a term of imprisonment imposed
9 under this subsection run concurrently with any
10 other term of imprisonment, including a term im-
11 posed for the crime of violence or drug trafficking
12 crime in which the firearm was used.

13 “(ii) No person sentenced under this subsection
14 shall be released for any reason whatsoever during
15 a term of imprisonment imposed under this para-
16 graph.

17 “(C) For the purposes of subparagraph (A), a
18 person shall be considered to be in possession of a
19 firearm if—

20 “(i) in the case of a crime of violence, the
21 person touches a firearm at the scene of the
22 crime at any time during the commission of the
23 crime; and

1 “(ii) in the case of a drug trafficking
2 crime, the person has a firearm readily avail-
3 able at the scene of the crime.

4 “(D) Except in the case of a person who en-
5 gaged in or participated in criminal conduct that
6 gave rise to the occasion for the person’s use of a
7 firearm, this paragraph shall not apply to a person
8 who may be found to have committed a criminal act
9 while acting in defense of person or property during
10 the course of a crime being committed by another
11 person (including the arrest or attempted arrest of
12 the offender during or immediately after the com-
13 mission of the crime).

14 “(E) In this paragraph—

15 “(i) the term ‘crime of violence’ means an
16 offense that is punishable by imprisonment for
17 more than 1 year, and—

18 “(I) has as an element the use, at-
19 tempted use, or threatened use of physical
20 force against the person or property of an-
21 other; or

22 “(II) by its nature involves a substan-
23 tial risk that physical force against the
24 person or property of another may be used
25 during the course of the offense; and

1 “(ii) the term ‘drug trafficking crime’
2 means a crime punishable by imprisonment for
3 more than one year involving the manufacture,
4 distribution, possession, cultivation, sale, or
5 transfer of a controlled substance, controlled
6 substance analogue, immediate precursor, or
7 listed chemical (as those terms are defined in
8 section 102 of the Controlled Substance Act (21
9 U.S.C. 802)), or an attempt or conspiracy to
10 commit such a crime.

11 “(F)(i) This paragraph shall supplement, but
12 not supplant, the efforts of State and local prosecu-
13 tors in prosecuting crimes of violence and drug traf-
14 ficking crimes that could be prosecuted under State
15 law.

16 “(ii) The Attorney General shall give due def-
17 erence to the interest that a State or local prosecu-
18 tor has in prosecuting a person under State law.

19 “(G) This paragraph shall not be construed to
20 create any rights, substantive or procedural, enforce-
21 able at law by any party in any manner, civil or
22 criminal, nor does it place any limitations on other-
23 wise lawful prerogatives of the Attorney General.”.

1 **SEC. 4. TRUTH IN SENTENCING.**

2 (a) IN GENERAL.—For a State to be eligible for pris-
3 on funds authorized under title II of the Violent Crime
4 Control and Law Enforcement Act of 1994, the Attorney
5 General must certify that the State has adopted—

6 (1) truth in sentencing laws with respect to any
7 felony crime of violence involving the use or at-
8 tempted use of force against a person, or use of a
9 firearm against a person, for which a minimum sen-
10 tence of 5 years or more is authorized, that—

11 (A) provide that defendants will serve at
12 least 85 percent of the sentence ordered; and

13 (B) provide for a binding sentencing guide-
14 line system that limits the discretion of sentenc-
15 ing judges to ensure greater uniformity in sen-
16 tencing;

17 (2) a pretrial detention system similar to the
18 system provided under section 3142 of title 18,
19 United States Code;

20 (3) sentences for firearm offenders where death
21 or serious bodily injury results, murderers, sex of-
22 fenders, and child abuse offenders that, after appli-
23 cation of relevant sentencing guidelines, result in the
24 imposition of sentences that are at least as long as
25 sentences imposed under Federal law (after applica-
26 tion of relevant sentencing guidelines); and

1 (4) suitable recognition for the rights of vic-
2 tims, including consideration of the victim's
3 perspective at all appropriate stages of criminal pro-
4 ceedings.

5 (b) DISQUALIFICATION.—

6 (1) IN GENERAL.—The Attorney General shall
7 disqualify a State or withdraw certification if the At-
8 torney General finds that the State does not comply
9 with subsection (a) or has ceased making substantial
10 progress toward compliance.

11 (2) ENTITLEMENT TO BENEFITS.—Except to
12 the extent the Attorney General otherwise directs, a
13 State that has been disqualified under this sub-
14 section shall not receive prison funds authorized
15 under title II of the Violent Crime Control and Law
16 Enforcement Act of 1994.

17 (c) WAIVER.—The Attorney General may waive, for
18 not more than one year, any of the requirements of this
19 section with respect to a State if the Attorney General
20 certifies that there are compelling law enforcement rea-
21 sons for doing so. Any State granted a waiver under this
22 subsection shall be treated as a qualifying State for
23 purposes of this section, unless the Attorney General oth-
24 erwise directs.

1 **SEC. 5. VICTIM RESTITUTION.**

2 (a) MANDATORY RESTITUTION AND OTHER PROVI-
3 SIONS.—Section 3663 of title 18, United States Code, is
4 amended—

5 (1) in subsection (a)—

6 (A) by striking “may order” and inserting
7 “shall order”; and

8 (B) by adding at the end the following new
9 paragraph:

10 “(4) In addition to ordering restitution to the
11 victim of the offense of which a defendant is con-
12 victed, a court may order restitution to any person
13 who, as shown by a preponderance of evidence, was
14 harmed physically, emotionally, or pecuniarily, by
15 unlawful conduct of the defendant during—

16 “(A) the criminal episode during which the
17 offense occurred; or

18 “(B) the course of a scheme, conspiracy, or
19 pattern of unlawful activity related to the of-
20 fense.”;

21 (2) in subsection (b)(1)(B) by striking “imprac-
22 tical” and inserting “impracticable”;

23 (3) in subsection (b)—

24 (A) in paragraph (2), by inserting “emo-
25 tional or” after “resulting in”; and

1 (B) by striking paragraph (4) and insert-
2 ing the following new paragraph:

3 “(4) in any case, reimburse the victim for—

4 “(A) necessary child care, transportation,
5 and other expenses related to participation in
6 the investigation or prosecution of the offense
7 or attendance at proceedings related to the of-
8 fense;

9 “(B) medical services relating to physical,
10 psychiatric, or psychological care;

11 “(C) physical and occupational therapy or
12 rehabilitation;

13 “(D) necessary transportation, temporary
14 housing, and child care expenses;

15 “(E) lost income;

16 “(F) attorneys’ fees, plus any costs in-
17 curred in obtaining a civil protection order; and

18 “(G) any other losses suffered by the vic-
19 tim as a proximate result of the offense; and”;

20 (4) in subsection (c), by striking “If the Court
21 decides to order restitution under this section, the”
22 and inserting “The”;

23 (5) by striking subsections (d), (e), (f), (g), and
24 (h); and

1 (6) by adding at the end the following new sub-
2 sections:

3 “(j)(1)(A) The court shall order restitution to a vic-
4 tim in the full amount of the victim’s losses as determined
5 by the court and without consideration of—

6 “(i) the economic circumstances of the offender;
7 or

8 “(ii) the fact that a victim has received or is en-
9 titled to receive compensation with respect to a loss
10 from insurance or any other source.

11 “(B) For purposes of this paragraph, the term ‘eco-
12 nomic circumstances’ includes—

13 “(i) the financial resources and other assets of
14 the defendant;

15 “(ii) projected earnings, earning capacity, and
16 other income of the defendant; and

17 “(iii) any financial obligations of the defendant,
18 including obligations to dependents.

19 “(2) Upon determination of the amount of restitution
20 owed to each victim, the court shall specify in the restitu-
21 tion order the manner and schedule according to which
22 the restitution is to be paid. The court shall consider—

23 “(A) the financial resources and other assets of
24 the offender;

1 “(B) expected earnings and other income of the
2 offender; and

3 “(C) any financial obligations of the offender,
4 including obligations to dependents.

5 “(3) A restoration order may direct the offender to
6 make a single, lump-sum payment, partial payment at
7 specified intervals, or such in-kind payments as may be
8 agreeable to the victim.

9 “(4) An in-kind payment described in paragraph (3)
10 may be in the form of—

11 “(A) return of property;

12 “(B) replacement of property; or

13 “(C) services rendered to the victim or to a per-
14 son or organization other than the victim.

15 “(k) When the court finds that more than 1 offender
16 has contributed to the loss of a victim, the court may make
17 each offender liable for payment of the full amount of res-
18 titution or may apportion liability among the offenders to
19 reflect the level of contribution and economic cir-
20 cumstances of each offender.

21 “(l) When the court finds that more than 1 victim
22 has sustained a loss requiring restitution by an offender,
23 the court shall order full restitution of each victim but may
24 provide for different payment schedules to reflect the eco-
25 nomic circumstances of each victim.

1 “(m)(1) If the victim has received or is entitled to
2 receive compensation with respect to a loss from insurance
3 or any other source, the court shall order that restitution
4 be paid to the person who provided or is obligated to pro-
5 vide the compensation, but the restitution order shall pro-
6 vide that all restitution of victims required by the order
7 be paid to the victims before any restitution is paid to
8 such a provider of compensation.

9 “(2) The issuance of a restitution order shall not af-
10 fect the entitlement of a victim to receive compensation
11 with respect to a loss from insurance or any other source
12 until the payments actually received by the victim under
13 the restitution order fully compensate the victim for the
14 loss, at which time a person that has provided compensa-
15 tion to the victim shall be entitled to receive any payments
16 remaining to be paid under the restitution order.

17 “(3) Any amount paid to a victim under an order of
18 restitution shall be set off against any amount later recov-
19 ered as compensatory damages by the victim in—

20 “(A) any Federal civil proceeding; and

21 “(B) any State civil proceeding, to the extent
22 provided by the law of the State.

23 “(n) A restitution order shall provide that—

24 “(1) all fines, penalties, costs, restitution pay-
25 ments, and other forms of transfers of money or

1 property made pursuant to the sentence of the court
2 shall be made by the offender to an entity des-
3 igned by the Director of the Administrative Office
4 of the United States Courts for accounting and pay-
5 ment by the entity in accordance with this sub-
6 section;

7 “(2) the entity designated by the Director of
8 the Administrative Office of the United States
9 Courts shall—

10 “(A) log all transfers in a manner that
11 tracks the offender’s obligations and the cur-
12 rent status in meeting the obligations, unless,
13 after efforts have been made to enforce the res-
14 titution order and it appears that compliance
15 cannot be obtained, the court determines that
16 continued recordkeeping under this subpara-
17 graph would not be useful; and

18 “(B) notify the court and the interested
19 parties when an offender is 90 days in arrears
20 in meeting those obligations; and

21 “(3) the offender shall advise the entity des-
22 igned by the Director of the Administrative Office
23 of the United States Courts of any change in the of-
24 fender’s address during the term of the restitution
25 order.

1 “(o) A restitution order shall constitute a lien against
2 all property of the offender and may be recorded in any
3 Federal or State office for the recording of liens against
4 real or personal property.

5 “(p)(1) Compliance with the schedule of payment and
6 other terms of a restitution order shall be a condition of
7 any probation, parole, or other form of release of an of-
8 fender.

9 “(2) If a defendant fails to comply with a restitution
10 order, the court may revoke probation or a term of super-
11 vised release, modify the term or conditions of probation
12 or a term of supervised release, hold the defendant in con-
13 tempt of court, enter a restraining order or injunction,
14 order the sale of property of the defendant, accept a per-
15 formance bond, or take any other action necessary to ob-
16 tain compliance with the restitution order.

17 “(3) In determining what action to take, the court
18 shall consider the defendant’s employment status, earning
19 ability, financial resources, the willfulness in failing to
20 comply with the restitution order, and any other cir-
21 cumstances that may affect the defendant’s ability to com-
22 ply with the restitution order.

23 “(q) An order of restitution may be enforced—

24 “(1) by the United States—

1 “(A) in the manner provided for the collec-
 2 tion and payment of fines in subchapter (B) of
 3 chapter 229; or

4 “(B) in the same manner as a judgment in
 5 a civil action; and

6 “(2) by a victim named in the order to receive
 7 the restitution, in the same manner as a judgment
 8 in a civil action.

9 “(r) A victim or the offender may petition the court
 10 at anytime to modify a restitution order as appropriate
 11 in view of a change in the economic circumstances of the
 12 offender.”.

13 (b) PROCEDURE FOR ISSUING ORDER OF RESTITU-
 14 TION.—Section 3664 of title 18, United States Code, is
 15 amended—

16 (1) by striking subsection (a);

17 (2) by redesignating subsections (b), (c), (d),
 18 and (e) as subsections (a), (b), (c), and (d), respec-
 19 tively;

20 (3) by amending subsection (a), as redesignated
 21 by paragraph (2), to read as follows:

22 “(a)(1) The court may order the probation service of
 23 the court to obtain information pertaining to the amount
 24 of loss sustained by any victim as a result of the offense,
 25 the financial resources of the defendant, the financial

1 needs and earning ability of the defendant and the defend-
2 ant's dependents, and such other factors as the court
3 deems appropriate.

4 “(2) The probation service of the court shall include
5 the information collected in the report of presentence in-
6 vestigation or in a separate report, as the court directs.”;
7 and

8 (4) by adding at the end the following new sub-
9 sections:

10 “(e) The court may refer any issue arising in connec-
11 tion with a proposed order of restitution to a magistrate
12 or special master for proposed findings of fact and rec-
13 ommendations as to disposition, subject to a de novo de-
14 termination of the issue by the court.

15 “(f)(1) Not later than 60 days after a conviction is
16 entered on the record, and, in any event, not later than
17 10 days before sentencing, the United States Attorney (or
18 such Attorney's delegate), after consulting with the victim,
19 shall prepare and file an affidavit with the court listing
20 the amounts subject to restitution under this section. The
21 affidavit shall be signed by the United States Attorney (or
22 the delegate) and the victim.

23 “(2) If the victim objects to any of the information
24 included in the affidavit, the United States Attorney (or
25 the delegate) shall advise the victim that the victim may

1 file a separate affidavit and shall assist the victim in the
2 preparation affidavit.

3 “(3) If after the defendant has been notified of the
4 affidavit, no objection is raised by the defendant, the
5 amounts attested to in the affidavit filed pursuant to para-
6 graph (1) shall be entered in the court’s restitution order.
7 If objection is raised, the court may require the victim or
8 the United States Attorney (or the United States Attor-
9 ney’s delegate) to submit further affidavits or other sup-
10 porting documents, demonstrating the victim’s losses.

11 “(4)(A) If the court concludes, after reviewing the
12 supporting documentation and considering the defendant’s
13 objections, that there is a substantial reason for doubting
14 the authenticity or veracity of the records submitted, the
15 court may require additional documentation or hear testi-
16 mony on those questions.

17 “(B) The privacy of any records filed, or testimony
18 heard, pursuant to this section, shall be maintained to the
19 greatest extent possible, and such records may be filed or
20 testimony heard in camera.

21 “(5) If the victim’s losses are not ascertainable 10
22 days before sentencing as provided in paragraph (1), the
23 United States Attorney (or the United States Attorney’s
24 delegate) shall so inform the court, and the court shall
25 set a date for the final determination of the victim’s losses,

1 which shall be not later than 90 days after sentencing.
 2 If the victim subsequently discovers further losses, the vic-
 3 tim shall have 90 days after discovery of those losses in
 4 which to petition the court for an amended restitution
 5 order. Such order may be granted only upon a showing
 6 of good cause for the failure to include such losses in the
 7 initial claim for restitutionary relief.

8 “(6) An award of restitution to the victim of an of-
 9 fense under this chapter is not a substitute for imposition
 10 of punishment under this chapter.”.

11 **SEC. 6. LUXURIES ABOLISHED AND PRISON WORK RE-**
 12 **QUIRED.**

13 Section 4001(b)(2) of title 18, United States Code,
 14 is amended by adding at the end the following sentence:
 15 “Not later than 120 days after the date of enactment of
 16 the Crime Control Act of 1995, the Attorney General shall
 17 implement and enforce regulations mandating prison work
 18 for all able-bodied inmates in Federal penal and correc-
 19 tional institutions. Such regulations shall also prohibit the
 20 provision by the Government in inmates’ cells of television,
 21 radio, telephone, stereo, or other similar amenities.”.



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